

REMARKS/ARGUMENTS

In response to the Office Action dated December 19, 2003, claims 2-10 and 12-21 are amended,. Claims 1-21 are now active in this application. No new matter has been added.

The amendment to claims 2-10 and 12-20 merely changes "An" to "The".

REJECTION OF CLAIMS UNDER 35 U.S.C. § 101

Claim 21 rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter. The Examiner maintains that "A computer program product for processing image data" is non-statutory. By this response, claim 21 is directed to recite statutory subject matter. Thus, the preamble of amended claim 21 recites:

A computer program product embodied in a computer readable medium, said computer program product including a computer program for causing a computer to perform processing image data representing an image by directing the computer to execute the steps of:

As amended claim 21 is now directed to statutory subject matter, the rejection of claim 21 under 35 U.S.C. § 101 is respectfully solicited.

REJECTION OF CLAIMS UNDER 35 U.S.C. § 102 AND § 103

I. Claims 1, 2, 4, 5, 7, 9, 11, 12, 14, 15, 17, 19 and 21 are rejected under 35 U.S.C. § 102(e) as being anticipated by Fujimoto et al. (USPN 6,035,074).

The rejections are respectfully traversed.

The factual determination of lack of novelty under 35 U.S.C. § 102 requires the identical disclosure in a single reference of each element of a claimed invention such that the identically

claimed invention is placed into possession of one having ordinary skill in the art. *Helifix Ltd. v. Blok-Lok, Ltd.*, 208 F.3d 1339, 200 U.S. App. LEXIS 6300, 54 USPQ2d 1299 (Fed. Cir. 2000); *Electro Medical Systems S.A. v. Cooper Life Sciences, Inc.*, 34 F.3d 1048, 32 USPQ2d 1017 (Fed. Cir. 1994).

While the Examiner maintains that Fujimoto et al. determines a frame color based on the feature extracted and generating a frame of the frame color determined around the image, referring to column 8, lines 59-64 and column 4, lines 60-63, Fujimoto et al. does not disclose these features. What Fujimoto et al. discloses is forming a face image area cutting section that is to be cut out. In doing this, Fujimoto et al. *forms a frame* so that the *frame* (proportionally) embraces a designated (face) image area that is to be cut out. However, there is no disclosure or suggestion in Fujimoto et al. that the *frame* (proportionally) embracing the designated (face) image area ever has a color *based upon and extracted feature relating to image color of the image*.

What is to be colored (and is shown in reverse) in Fujimoto et al. is the (face) image cutting area that is defined by the *frame* and not the frame itself. This is clearly seen in FIG. 9 where the frame itself is not indicated as being shown in reverse color as is the color of the (face) recognition section (FIG. 7) that was initially recognized via color. In fact, Fujimoto et al. has no disclosure at all concerning the color of the *frame* that defines the (face) image area that is to be cut. Furthermore, since there is no difference in color between the *frame* shown in Figs. 8 and 9, it is clear that Fujimoto et al. does not intend that the *frame* of FIG. 9 is to be shown in reverse color of the frame shown in FIG. 8.

Furthermore, Fujimoto et al. clearly discloses that there is a distinction between the *frame* and the cutting area that is defined by the *frame*. Consequently, the Examiner cannot

properly identify the cutting area that is defined by the *frame* as the *frame*. While the cutting area that is defined by the *frame* may have color based on a feature extracted from the image, this cannot be said to be the case for the *frame*.

The above argued difference between the claimed device and method vis-à-vis the device and method of Fujimoto et al. undermine the factual determination that Fujimoto et al. identically describes the claimed inventions within the meaning of 35 U.S.C. § 102. *Minnesota Mining & Manufacturing Co. v. Johnson & Johnson Orthopaedics Inc.*, 976 F.2d 1559, 24 USPQ2d 1321 (Fed. Cir. 1992); *Kloster Speedsteel AB v. Crucible Inc.*, 793 F.2d 1565, 230 USPQ 81 (Fed. Cir. 1986). Applicants, therefore, submit that the imposed rejection of claims 1, 2, 4, 5, 7, 9, 11, 12, 14, 15, 17, 19 and 21 under 35 U.S.C. § 102 for lack of novelty as evidenced by Fujimoto et al. is not factually or legally viable and, hence, solicit withdrawal thereof.

Claims 3, 6, 8, 10, 13, 16 and 20 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Fujimoto et al.

The rejections are respectfully traversed.

As claims 3, 6, 8 and 10 depend from claim 1, and claims 13, 16 and 20 depend from claim 11, both of which are patentable over Fujimoto et al., claims 3, 6, 8, 10, 13, 16 and 20 are patentable over Fujimoto et al. also.

CONCLUSION

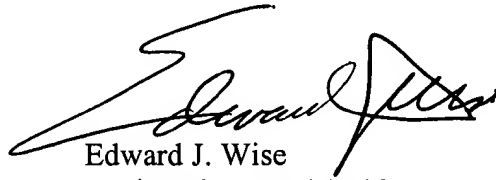
Accordingly, it is urged that the application, as now amended, is in condition for allowance, an indication of which is respectfully solicited. If there are any outstanding issues that might be resolved by an interview or an Examiner's amendment, Examiner is requested to call Applicants' attorney at the telephone number shown below.

09/620,473

To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 500417 and please credit any excess fees to such deposit account.

Respectfully submitted,

McDERMOTT WILL & EMERY

A handwritten signature in black ink, appearing to read 'Edward J. Wise', is written over a horizontal line.

Edward J. Wise
Registration No. 34,523

600 13th Street, NW
Washington, DC 20005-3096
(202) 756-8000 EJW/dmd
DATE: April 13, 2004
Facsimile: (202) 756-8087